IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 1216 of 2001
(Old No.258 of 1987)

Name Chandra Sagar & another

... Appellants

Versus

The State ... Opposite Party

Dated: May 09, 2007

Ms. Krishi Shukla, learned counsel for the applicant
Sri S.S. Adhikari, learned A.G.A. for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred under Section 374(2) of Code of Criminal procedure, 1973, is directed against the judgment and order dated 29.05.1986 passed by Special Judge, Nainital in Criminal Case No.08 of 1985, State Vs. Name Chand Sagar & another, whereby the learned special Judge has convicted the appellants u/s 7 of the E.C. Act and ordered to furnish a personal bond of Rs.2,000/- with two sureties of like amount for being of good conduct for period of one year and to serve out the sentence whenever called upon during this period. He also ordered for filing of the bonds by 7.6.1986 and in case of failure, the appellants were directed to undergo R.I. for 3 months.

2. In brief the prosecution story is this that appellants had been issued licence for running Khandsari Sugar Factory. According to the terms of licence, they had to operate 28 x 35.5. cm size 6 rollers and hydrolic non-sulfitation 12 Meerut type ovens but on 17.1.1985, 25.1.1985 and 5.2.1985 at the time of inspection, it was found that they had installed only

three rollers instead of 6 rollers and only 5 ovens instead of 12 ovens and were found preparing Gur by them. Hence, they violated the condition No.3 of the licence. After obtaining sanction for prosecution from the District Magistrate, the Sugar Cane Inspector filed complaint. The appellants were admitted to the licensee of the Khandsari Unit and alleged that due to the murder of their father, they could not install full capacity machines and ovens.

3. The prosecution in order to prove its case examined P.W.1 Anokhe Lal, Khandsari Officer, P.W.2 Shamsher Singh, Khandsari Officer and P.W.3 Purshottam Ram, Assistant Sugar commissioner, The learned special Judge, Nainital after appreciating the evidence on record convicted the appellants u/s 7 of the E.C. Act and ordered to furnish a personal bond of Rs.2,000/- with two sureties of like amount for being of good conduct for period of one year and to serve out the sentence whenever called upon during this period. The learned Special Judge, Nainital also ordered for filing of the bonds by 7.6.1986 and in case of failure, the appellants were directed to undergo R.I. for 3 months.

4. I have heard Ms. Krishi Shukla, learned counsel for the appellants and Mr. S.S. Adhikari, learned AGA for the State.

5. This Court vide order dated 23.2.2007 directed the trial court to submit the complete record of the case. In compliance of the order dated 23.2.2007 passed by this Court, District Judge, Nainital by his letter dated 2.3.2007 on the basis of the report of Record Keeper, District Court, Nainital has informed that except the

English part of the case, the record of the case has been weeded out on 28.11.1998. Learned counsel for the appellants Ms. Krishi Shukla and Mr. S.S. Adhikari, learned AGA for the State have stated that the reconstruction of the record is not possible. They also submitted that retrial is also not possible due to the expiry of period of about 21 years.

6. Even otherwise, learned counsel for the appellants Ms. Krishi Shukla has submitted that the appeal has now become infructuous due to the reason that the order dated 29.05.1986 passed by Special Judge, Nainital has been executed and the appellants have deposited their personal bonds of Rs.2,000/- each along with two sureties of like amount, as ordered by the court and now she does not want to press the appeal.

7. In view of the above, the appeal is dismissed. The order dated 29.5.1986 passed by Special Judge, Nainital is hereby confirmed.

(Dharam Veer, J.)

Rajeev Dang